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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of the Rate Applications of

Infinity Insurance Company,  
Applicant.

File Nos.: 23-130 and 23-131

**CONSUMER WATCHDOG'S  
PETITION FOR HEARING,  
PETITION TO INTERVENE, AND  
NOTICE OF INTENT TO SEEK  
COMPENSATION**

[Ins. Code §§ 1861.05 and 1861.10; Cal.  
Code Regs, tit. 10, §§ 2653.1, 2661.2  
and 2661.3]

1 Consumer Watchdog hereby requests that the Insurance Commissioner notice a public  
2 hearing pursuant to Insurance Code sections 1861.05, subdivisions (a) and (c), and 1861.10,  
3 subdivision (a), on the issues raised in this petition regarding the above-referenced Rate  
4 Applications of Infinity Insurance Company (“Infinity” or “Applicant”), at which time Applicant  
5 will be directed to appear and respond to the issues raised in this petition. Consumer Watchdog  
6 also hereby requests that it be granted leave to intervene in the proceeding on the Applications.  
7 Consumer Watchdog intends to seek compensation in this proceeding, and, pursuant to  
8 California Code of Regulations, title 10 (“10 CCR”), section 2661.3 subdivision (c), Consumer  
9 Watchdog’s proposed budget is attached hereto as Exhibit A.

10 In support of its petition, Consumer Watchdog alleges:

11 **I. THE APPLICATIONS**

12 1. On or about January 19, 2023, Applicant filed Rate Applications with the  
13 California Department of Insurance (“CDI”), seeking approval of an overall 26.1% rate increase  
14 to its Special auto line of insurance (File No. 23-130) and an overall 34% rate increase to its  
15 RSVP auto line of insurance (File No. 23-131 [together, “the Applications”]).

16 2. On or about January 27, 2023, the public was notified by the Department of the  
17 Applications.

18 **II. PETITIONER**

19 3. Petitioner Consumer Watchdog is a nonprofit, nonpartisan public interest  
20 corporation organized to represent the interests of consumers and taxpayers. A core focus of  
21 Consumer Watchdog’s advocacy is the representation of the interests of insurance consumers  
22 and policyholders, particularly as they relate to the implementation and enforcement of  
23 Proposition 103, in matters before the Legislature, the courts, and the CDI.

24 4. Consumer Watchdog’s founder authored Proposition 103 and led the successful  
25 campaign for its enactment by California voters in 1988. Consumer Watchdog’s staff and  
26 consultants include some of the nation’s foremost consumer advocates and experts on insurance  
27 ratemaking matters.

1           5.       Consumer Watchdog has served as a public watchdog with regard to insurance  
2 rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements  
3 and the status of the rollback regulations; reviewing and challenging rate filings made by insurers  
4 seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI;  
5 and educating the public concerning industry underwriting and rating practices, their rights under  
6 Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and  
7 intervened in actions in state court and appeared as amicus curiae in matters involving the  
8 interpretation and application of Proposition 103 and the Insurance Code.<sup>1</sup>

9           6.       Consumer Watchdog has initiated and intervened in numerous proceedings before  
10 the CDI related to the implementation and enforcement of Proposition 103's reforms, including  
11 over 125 such proceedings in the last twenty years. In every proceeding that has resulted in a  
12 final decision and in which Consumer Watchdog sought compensation, the Commissioner found  
13 that Consumer Watchdog made a substantial contribution, meaning that its participation was  
14 separate and distinct from any other party and that it presented relevant issues, evidence, and  
15 arguments that resulted in more credible, non-frivolous information being available to the  
16 Commissioner in making his final decision.

### 17 **III. EVIDENCE**

18           7.       At the requested public hearing, Consumer Watchdog will present and elicit  
19 evidence to show that the rates proposed in the Applications are excessive and/or unfairly  
20 discriminatory in violation of Insurance Code section 1861.05, subdivision (a), which provides  
21 that "[n]o rate shall be approved or remain in effect which is excessive, inadequate, [or] unfairly  
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24 <sup>1</sup> For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*  
25 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243;  
26 *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish*  
27 *Speaking Citizens' Found. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Ins. Co.*  
28 *(2004) 116 Cal.App.4th 968; State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th  
1029; *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th  
1354; *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029; *Mercury Cas. Co. v.*  
*Jones* (2017) 8 Cal.App.5th 561; *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82; and *State*  
*Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197.

discriminatory.” Additionally, Consumer Watchdog will present and elicit evidence that Applicant’s proposed rates violate 10 CCR § 2644.1, which provides that “[n]o rate shall be approved or remain in effect that is above the maximum permitted earned premium as defined in section 2644.2.”

8. Based on Consumer Watchdog’s preliminary analysis and the information contained in the Applications and publicly available from the Department’s website, Consumer Watchdog has identified the following issues with respect to the Applications on which it intends to present and elicit evidence as set forth in sections (a)–(d) below.

- a) Loss and Premium Trends (10 CCR § 2644.7): The Applicant has not demonstrated that the selected trend factors and trend data period used are the most actuarially sound. For example, the selected annual net trend for the COLL and COMP coverages are among the highest of the possible twenty values based upon the applicable regulation. The excessive net trends used by the Applicant overstate the projected loss ratios resulting in an inflated rate indication.
- b) Improper Loss Development (10 CCR § 2644.6): The Applicant has not demonstrated that the selected loss development methods used are the most actuarially sound. Applicant uses incurred loss development in the rate templates. For example, for the BI and UM coverages incurred development is materially higher than paid development. The developed incurred losses are 10% and 13% (for Special and RSVP respectively) higher than the developed paid losses for the most recent year for BI and about 7% and 6% higher (for Special and RSVP respectively) for UM. Applicant fails to explain why there are such large differences between the paid and incurred development.
- c) Improper / Unsupported Excluded Expenses (10 CCR§ 2644.10): Applicant has not shown that all expenses which should be excluded were adequately reflected in the filing.
- d) Data Availability (10 CCR§ 2643.7): There are several items which call in question the reliability of the data in the rate application. In the Rate Application Page 6, Program Detail: The Annual Statement values for RSVP and SPEC appear to be allocated to program rather than actual values. Applicant should provide actual program values in the

1 Program Detail section of the Rate Application. In addition, the DCCE ratios for both  
2 programs are negative for 2020 and 2021. The negative ratios indicate potential reserving  
3 problems and are inconsistent with the DCCE data contained in Exhibit 7. The 2021 loss  
4 ratios on Page 7, Statutory Data are 106.4% for SPEC and 111.1% for RSVP, while the  
5 2021 loss ratios on Page 6 are 74.9% for both programs. Applicant should explain why  
6 the loss ratios on Page 7 are so much larger than the loss ratios on Page 6.

7 9. This petition is based upon Consumer Watchdog's preliminary analysis of the  
8 Applications. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add  
9 issues for consideration as more information becomes available, including but not limited to  
10 violations of Insurance Code section 1859 for failure to disclose information in its filings that  
11 will affect policyholders' rates and premiums.

#### 12 **IV. AUTHORITY FOR PETITION AND GRANTING REQUEST FOR A HEARING**

13 10. The authority for this petition for hearing is Insurance Code section 1861.10,  
14 subdivision (a), which grants "any person" the right to initiate or intervene in a proceeding  
15 permitted or established by Proposition 103 and the right to enforce Proposition 103.  
16 Specifically, as stated above, Consumer Watchdog initiates this proceeding to enforce Insurance  
17 Code section 1861.05 and the Commissioner's regulations.

18 11. Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05,  
19 subdivision (c), which allows "a consumer or his or her representative" to request a hearing on a  
20 rate application and 10 CCR § 2653.1, which provides that "any person, whether as an  
21 individual, representative of an organization, or on behalf of the general public, may request a  
22 hearing by submitting a petition for hearing."

23 12. This petition is timely pursuant to Insurance Code section 1861.05, subdivision  
24 (c), and 10 CCR § 2646.4(a)(1) because it is filed within forty-five (45) days of the January 27,  
25 2023 public notice date.

#### 26 **V. INTEREST OF PETITIONER**

27 13. Consumer Watchdog's interest in the above-captioned proceeding is to ensure that  
28 Applicant's automobile insurance policyholders are charged rates and premiums that comply

1 with the provisions of Insurance Code sections 1861.05(a)'s requirement that "no rate shall be  
2 approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or  
3 otherwise in violation of this chapter," and the requirements contained in the regulations  
4 promulgated thereunder. Pursuant to state law, drivers are required to purchase automobile  
5 insurance. Consumers who are overcharged by insurers for this insurance coverage are part of  
6 Consumer Watchdog's core constituency.

7 14. As noted in paragraphs 3–6 above, Consumer Watchdog's staff and consultants  
8 have substantial experience and expertise in insurance rate matters, which Consumer Watchdog  
9 believes will aid the CDI in its review of the Applications and aid the Commissioner in making  
10 his ultimate decision as to whether to approve or disapprove the requested rate. As noted in  
11 paragraph 6 above, the Commissioner has found that Consumer Watchdog has made a  
12 substantial contribution in all of the rate proceedings in which it has intervened in the last  
13 nineteen years that have proceeded to a final decision wherein Consumer Watchdog has sought  
14 compensation. If leave to intervene is granted, Consumer Watchdog will participate fully in all  
15 aspects of this proceeding.

16 15. Consumer Watchdog also has an interest in ensuring that Applicant, the CDI, and  
17 the Insurance Commissioner comply with the laws enacted by the voters under Proposition 103,  
18 and the rules and regulations that implement those laws, including that all information submitted  
19 to the Department in connection with the Applications is made publicly available.

## 20 **VI. AUTHORITY FOR PETITION TO INTERVENE**

21 16. The authority for Consumer Watchdog's petition to intervene is Insurance Code  
22 section 1861.10, subdivision (a), which grants "any person" the right to "initiate or intervene in  
23 any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division  
24 1 of the Insurance Code] . . . and enforce any provision of this article." This proceeding is a  
25 proceeding to enforce Insurance Code section 1861.05 pursuant to Insurance Code section  
26 1861.10(a), and hence is a proceeding both "permitted" and "established" by Chapter 9. This  
27 petition to intervene is also authorized by 10 CCR § 2661.1 et seq. Although consumer presence  
28 in departmental proceedings typically results in significant reductions to policyholders' rates, the

amount of savings for each individual consumer is outweighed by the time and expense of hiring individual counsel or an advocacy group to protect his or her rights. Thus, an independent organization like Consumer Watchdog introduces a voice that otherwise would be absent from this proceeding.

## **VII. PARTICIPATION OF CONSUMER WATCHDOG**

17. Consumer Watchdog verifies, in accordance with 10 CCR § 2661.3, that it will be able to attend and participate in this proceeding without unreasonably delaying this proceeding or any other proceedings before the Insurance Commissioner.

## **VIII. INTENT TO SEEK COMPENSATION**

18. The Commissioner has awarded Consumer Watchdog compensation for its reasonable advocacy and witness fees and expenses in past departmental proceedings. The Commissioner issued Consumer Watchdog's latest Finding of Eligibility on July 26, 2022, effective for two years as of July 12, 2022. Consumer Watchdog was previously found eligible to seek compensation on August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14, 2016; July 24, 2014; July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004; June 20, 2002; October 1, 1997; September 26, 1995; September 27, 1994; and September 13, 1993.

19. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to 10 CCR § 2661.3(c), Consumer Watchdog's estimated budget in this proceeding is attached hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors including: (1) the technical and legal expertise needed to address these issues; (2) its current best estimate of the time needed to participate effectively in these proceedings, taking into account the time already expended by Consumer Watchdog staff and its consulting actuary and an estimate of time needed to complete remaining tasks through completion of a noticed evidentiary hearing; and (3) past experience in similar rate proceedings before the CDI. The estimated budget is reasonable and the staffing level is appropriate, given the expertise that Consumer Watchdog and its consultants bring to these proceedings when the issues involved are issues at the very core of its organizational mission and strike at the very heart of Proposition 103 itself.

1 The budget presented in the attached Exhibit A is a preliminary estimate, and Consumer  
2 Watchdog reserves the right to amend its proposed budget as its expenses become more certain,  
3 or in its request for final compensation. Consumer Watchdog will give notice of such  
4 modifications as soon as practicable after it discovers the need to revise its estimates, and shall  
5 comply with the budget revision requirements in the relevant intervenor regulations.

6 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance  
7 Commissioner GRANT its petition for hearing and petition to intervene in the proceeding.  
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9 DATED: March 13, 2023

Respectfully submitted,

Harvey Rosenfield

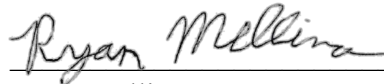
Pamela Pressley

Benjamin Powell

Ryan Mellino

CONSUMER WATCHDOG

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14 By:



Ryan Mellino

Attorneys for CONSUMER WATCHDOG  
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1 **VERIFICATION OF RYAN MELLINO IN SUPPORT OF CONSUMER WATCHDOG'S**  
2 **PETITION FOR HEARING, PETITION TO INTERVENE, AND NOTICE OF INTENT**  
3 **TO SEEK COMPENSATION**

4 I, Ryan Mellino, verify:


5 1. I am an attorney employed by Consumer Watchdog. If called as a witness, I could  
6 and would testify competently to the facts stated in this verification.

7 2. I personally prepared the pleading titled "Consumer Watchdog's Petition for  
8 Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation" filed in this matter.  
9 All of the factual matters alleged therein are true of my own personal knowledge, or I believe  
10 them to be true after conducting some inquiry and investigation.

11 3. Pursuant to California Code of Regulations, title 10, section 2661.3, Consumer  
12 Watchdog attaches as Exhibit A its estimated budget in this proceeding.

13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct.

15 Executed March 13, 2023 at Los Angeles, California.

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17 Ryan Mellino  
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**EXHIBIT A  
PRELIMINARY BUDGET**

**ITEMS**

**ESTIMATED COST**

1. Consumer Watchdog Attorneys and Paralegal

Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 100 hours ..... \$59,500

- Edit petition for hearing and petition to intervene; supervise Consumer Watchdog counsel; oversee preparation of legal documents; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant's counsel; assist in all phases of proceeding, evidentiary hearing, and preparation of post-hearing briefing; edit request for compensation and supporting attorney declaration.

Benjamin Powell (Staff Attorney) @ \$350 per hour, 200 hours ..... \$70,000

- Draft and edit petition for hearing and petition to intervene; Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant's counsel; draft briefing of legal issues; conduct discovery and preparation for evidentiary hearing; participate in evidentiary hearing and post-hearing legal briefing; edit request for compensation.

Kaitlyn Gentile (Paralegal) @ \$200 per hour, 50 hours ..... \$10,000

- Draft and edit petition for hearing and petition to intervene; assist with discovery and preparation of motions and briefs; prepare request for compensation.

Harvey Rosenfield (Of Counsel) @ \$695 per hour, 15 hours ..... \$10,425

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

2. Consumer Watchdog Expenses

Office expenses (photocopies, facsimile, telephone calls, postage, etc.) .....\$2,000

Travel (ground transportation; airfare; hotel) .....\$5,000

Consumer Watchdog Subtotal .....\$156,925

3. Expert Witness: AIS Risk Consultants, Inc.

Allan I. Schwartz, President of AIS Risk Consultants @ \$915 per hour, 200 hours..... \$183,000

- Lead actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurers' expert witnesses.

Katherine Tollar @ \$415 per hour, 100 hours ..... \$41,500

- Assist Mr. Schwartz in document review, rate level analysis, preparation of testimony.

4. Travel by Mr. Schwartz

Ground transportation; airfare to hearing; hotel ..... \$5,000

<u>AIS Risk Consultants Subtotal.....</u>	<u>\$229,500</u>
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TOTAL ESTIMATED BUDGET:	<u>\$386,425</u>
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